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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

CORRIELUS, JEAN M

ART UNIT PAPER NUMBER

2162

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,575

Applicant(s)

LOW ET AL.

Examiner

Jean M Corrielus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to the amendment filed on May 6, 2005, in which claims 19-36 are presented for further examination.

Response to Arguments.

2. Applicant's arguments filed May 6, 2005 have been fully considered but they are not persuasive. (See examiner's remark).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
5. Claims 19-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olivier US Patent no. 6,480,885 and Ogilvie et al., (US Patent no. 6,324,596.

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As to claims 19 and 36, Olivier discloses an analogous system that enables users to exchange group electronic mail by establishing profiles and criteria for determining personalized subsets within a group by comparing the identified appearing on the allowed list to determine whether each designated recipient is on the list for the intended recipient that stored on the database of the e-mail manager (col.17, lines 7-12). In particular, Olivier stated that if the message is not approved, the sender is notified by the system (col.14, line 56-col.15, line 15). Although, Olivier does not explicitly discloses the use of notifying the recipient if a message is unapproved.

Olivier, however, stated when someone responds to a message via their email client's reply all feature, the message is addressed back to that to header field, including the encoded unique ID is extracted from the email address and it then uses the stored distribution list associated with the unique ID, rather than the sender's distribution list, so the system would automatically checking the recipient's message acceptance and unapproval criteria data. Olivier also allows the sender to modify the setting when sending a message. Such teaching of Olivier has the functional limitation of sending a notification to the recipient when a message is unapproved with respect to the message criteria data set by the sender. Once the notification is set by Olivier in the message criteria data, the recipient will automatically receives an acknowledgement as to whether a message is approved or not (see Olivier col.16, lines 25-62). Ogilvie, on the other hand, discloses an analogous system for providing email message originator and distributors with default control over message removal at a message recipient's location, regardless of whether the message has been opened. In particular, Ogilvie discloses the claimed feature "notifying the recipient if a message is unapproved" as a means of providing the recipient with the capability to manage unsolicited email messages without the messages inadvertently removed by a message

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filter, and also requesting to remove from the mailing list (col.1, lines 55-64; col.14, lines 26-39). Ogilvie, also transfers the burden from the recipient to the system by automatically removing unsolicited email message before or after being displayed. The system of Ogilvie has the capability, both, of not requiring that recipients affirmatively remove unwanted email or create a reply message having remove in the subject to indicate their lack of interest in the subject matter (col.11, lines 1-6) and determining whether they contain any self removing message indicators from message originators then automatically notifying the recipient according to the instruction of the replacement message (col.13, lines 1-5; col.14, lines 28-39). Ogilvie has shown that is old and well known to “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing (see Ogilvie’s col.1, lines 45-65 and col.2, lines 1-7; col.7, lines 4-22; col.8, lines 2-11). Ogilvie further discloses the claimed features “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” by allowing recipient to overwrite the self-removing message after the unapproved being read, so the recipient has option to manually delete the unapproved message by moving it from the inbox to the trash folder (col.9, lines 59-66). Therefore, it would have been obvious to one of ordinary skill in the art of data processing, at the time the present invention was made to combine the teachings of the cited references, wherein the message distribution provided therein (See Olivier’s fig.10 (2)) would incorporate the use of notifying the recipient if the message is unapproved (unsolicited), in the same conventional manner as disclosed by Ogilvie (col.1, lines 55-64; col.13, lines 1-5; col.14, lines 28-39; col.9, lines 59-66). One having ordinary skill in the art would have been motivated to utilize such a combination

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would provide Olivier's system the enhanced capability of managing unsolicited email messages without the messages inadvertently removed by a message filter, thereby providing users the option to delete the email message after viewing.

Claim 20, Olivier and Ogilvie discloses substantially the invention as claimed. In addition Ogilvie discloses the claimed "allowing the recipient to view an unapproved message" as a means of providing the recipient with the capability to manage unsolicited email messages without the messages inadvertently removed by a message filter, and also requesting to remove from the mailing list (col.1, lines 55-64; col.14, lines 26-39).

As to claim 21, Olivier and Ogilvie disclose substantially the invention as claimed. Olivier, however, does not explicitly disclose the claimed notifying the recipient with a notification message having a link to network data representing a list of unapproved.

Ogilvie, on the other hand, discloses an analogous system for providing email message originator and distributors with default control over message removal at a message recipient's location, regardless of whether the message has been opened. In particular, Ogilvie discloses the claimed feature "notifying the recipient if a message is unapproved" as a means of providing the recipient with the capability to manage unsolicited email messages without the messages inadvertently removed by a message filter, and also requesting to remove from the mailing list (col.1, lines 55-64; col.14, lines 26-39). Ogilvie also transfers the burden from the recipient to the system by automatically removing unsolicited email message before or after being displayed. The system of Ogilvie has the capability, both, of not requiring that recipients affirmatively remove unwanted

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email or create a reply message having remove in the subject to indicate their lack of interest in the subject matter (col.11, lines 1-6) and determining whether they contain any self removing message indicators from message originators then automatically notifying the recipient according to the instruction of the replacement message (col.13, lines 1-5; col.14, lines 28-39). Therefore, it would have been obvious to one of ordinary skill in the art of data processing, at the time the present invention was made to combine the teachings of the cited references, wherein the message distribution provided therein (See Olivier's fig.10 (2)) would incorporate the use of notifying the recipient if the message is unapproved (unsolicited), in the same conventional manner as disclosed by Ogilvie (col.1, lines 55-64; col.13, lines 1-5; col.14, lines 28-39). One having ordinary skill in the art would have been motivated to utilize such a combination would provide Olivier's system the enhanced capability of managing unsolicited email messages without the messages inadvertently removed by a message filter, thereby providing users the option to delete the email message after viewing.

As to claim 22, Since Olivier discloses a web browser plug-ins and other new technology that allow the exchanged messages to be stored somewhere other than the currently viewed web site, retrieve messages from the independent data store and displayed to the user and use an address of a specific page being viewed within the web site (col.25, lines 25-41), the claimed wherein the network data comprises markup language data accessible by a computer device of the recipient is met.

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As to claim 23, Olivier discloses the claimed allowing the recipient to set criteria to determine if the message is approved (col.14, line 55-col.16, line 15; col.17, lines 7-21).

As to claim 24, Olivier discloses the claimed wherein the criteria include a sender of the message being on a stored approved list for the recipient (col.14, line 55-col.16, line 15; col.17, lines 7-21).

As to claim 25, Olivier discloses the claimed allowing the recipient to change the criteria (col.17, line 65-col.18, line 4).

As to claims 26-27, Olivier discloses the claimed notifying a sender of the unapproved message of deletion of the unapproved message (col.14, lines 56-58; col.15, lines 4-14).

As to claim 28, Olivier discloses the claimed wherein the message and the criteria are stored on an electronic message server (col.5, lines 5-45).

As to claim 29, Olivier discloses an analogous system that enables users to exchange group electronic mail by establishing profiles and criteria for determining personalized subsets within a group by comparing the identified appearing on the allowed list to determine whether each designated recipient is on the list for the intended recipient that stored on the database of the e-mail manager (col.17, lines 7-12). In particular, Olivier stated that if the message is not approved, the sender is notified by the system (col.14, line 56-col.15, line 15). Although, Olivier

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does not explicitly disclose the use of notifying the recipient if a message is unapproved.

Olivier, however, stated when someone responds to a message via their email client's reply all feature, the message is addressed back to that header field, including the encoded unique ID is extracted from the email address and it then uses the stored distribution list associated with the unique ID, rather than the sender's distribution list, so the system would automatically check the recipient's message acceptance and unapproval criteria data. Olivier also allows the sender to modify the setting when sending a message. Such teaching of Olivier has the functional limitation of sending a notification to the recipient when a message is unapproved with respect to the message criteria data set by the sender. Once the notification is set by Olivier in the message criteria data, the recipient will automatically receive an acknowledgement as to whether a message is approved or not (see Olivier col.16, lines 25-62). Ogilvie, on the other hand, discloses an analogous system for providing email message originator and distributors with default control over message removal at a message recipient's location, regardless of whether the message has been opened. In particular, Ogilvie discloses the claimed feature "notifying the recipient if a message is unapproved" as a means of providing the recipient with the capability to manage unsolicited email messages without the messages inadvertently removed by a message filter, and also requesting to remove from the mailing list (col.1, lines 55-64; col.14, lines 26-39). Ogilvie also transfers the burden from the recipient to the system by automatically removing unsolicited email message before or after being displayed. The system of Ogilvie has the capability, both, of not requiring that recipients affirmatively remove unwanted email or create a reply message having remove in the subject to indicate their lack of interest in the subject matter (col.11, lines 1-6) and determining whether they contain any self removing message indicators

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from message originators then automatically notifying the recipient according to the instruction of the replacement message (col.13, lines 1-5; col.14, lines 28-39). Ogilvie has shown that is old and well known to “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing (see Ogilvie’s col.1, lines 45-65 and col.2, lines 1-7; col.7, lines 4-22; col.8, lines 2-11). Ogilvie further discloses the claimed features “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” by allowing recipient to overwrite the self-removing message after the unapproved being read, so the recipient has option to manually delete the unapproved message by moving it from the inbox to the trash folder (col.9, lines 59-66). Therefore, it would have been obvious to one of ordinary skill in the art of data processing, at the time the present invention was made to combine the teachings of the cited references, wherein the message distribution provided therein (See Olivier’s fig.10 (2)) would incorporate the use of notifying the recipient if the message is unapproved (unsolicited), in the same conventional manner as disclosed by Ogilvie (col.1, lines 55-64; col.13, lines 1-5; col.14, lines 28-39; col.9, lines 59-66). One having ordinary skill in the art would have been motivated to utilize such a combination would provide Olivier’s system the enhanced capability of managing unsolicited email messages without the messages inadvertently removed by a message filter, thereby providing users the option to delete the email message after viewing.

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As to claim 30, Olivier discloses the claimed features “an electronic message server for receiving and storing electronic messages for a recipient” by establishing profiles and criteria in the exchange group electronic mail for determining personalized subsets within a group by comparing the identified appearing on the allowed list to determine whether each designated recipient is on the list for the intended recipient that stored on the database of the e-mail manager (col.17, lines 7-12); “an electronic message manager for processing electronic messages for a recipient to determine if the electronic messages are approved based on stored criteria, sending approved electronic messages for the recipient to a location for access by the recipient” by determining if the message is not approved, the sender is notified by the system (col.14, line 56- col.15, line 15). Although, Olivier does not explicitly discloses the use of notifying the recipient if a message is unapproved. Olivier, however, stated when someone responds to a message via their email client’s reply all feature, the message is addressed back to that to header field, including the encoded unique ID is extracted from the email address and it then uses the stored distribution list associated with the unique ID, rather than the sender’s distribution list, so the system would automatically checking the recipient’s message acceptance and unapproval criteria data. Olivier also allows the sender to modify the setting when sending a message. Such teaching of Olivier has the functional limitation of sending a notification to the recipient when a message is unapproved with respect to the message criteria data set by the sender. Once the notification is set by Olivier in the message criteria data, the recipient will automatically receives an acknowledgement as to whether a message is approved or not (see Olivier col.16, lines 25-62). Ogilvie, on the other hand, discloses an analogous system for providing email message originator and distributors with default control over message removal at a message recipient’s location,

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regardless of whether the message has been opened. In particular, Ogilvie discloses the claimed feature “notifying the recipient if a message is unapproved” as a means of providing the recipient with the capability to manage unsolicited email messages without the messages inadvertently removed by a message filter, and also requesting to remove from the mailing list (col.1, lines 55-64; col.14, lines 26-39). Ogilvie also transfers the burden from the recipient to the system by automatically removing unsolicited email message before or after being displayed. The system of Ogilvie has the capability, both, of not requiring that recipients affirmatively remove unwanted email or create a reply message having remove in the subject to indicate their lack of interest in the subject matter (col.11, lines 1-6) and determining whether they contain any self removing message indicators from message originators then automatically notifying the recipient according to the instruction of the replacement message (col.13, lines 1-5; col.14, lines 28-39). Ogilvie has shown that is old and well known to “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing (see Ogilvie’s col.1, lines 45-65 and col.2, lines 1-7; col.7, lines 4-22; col.8, lines 2-11). Ogilvie further discloses the claimed features “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” by allowing recipient to overwrite the self-removing message after the unapproved being read, so the recipient has option to manually delete the unapproved message by moving it from the inbox to the trash folder (col.9, lines 59-66).

Therefore, it would have been obvious to one of ordinary skill in the art of data processing, at the time the present invention was made to combine the teachings of the cited references, wherein the message distribution provided therein (See Olivier’s fig.10 (2)) would incorporate the use of

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notifying the recipient if the message is unapproved (unsolicited), in the same conventional manner as disclosed by Ogilvie (col. 1, lines 55-64; col. 13, lines 1-5; col. 14, lines 28-39; col. 9, lines 59-66). One having ordinary skill in the art would have been motivated to utilize such a combination would provide Olivier's system the enhanced capability of managing unsolicited email messages without the messages inadvertently removed by a message filter, thereby providing users the option to delete the email message after viewing.

Claims 31-32 are computer system performing by the method of claims 19-28 above. They are, therefore, under the same rationale. In addition, Ogilvie discloses the use of storing and sending a notification to the recipient of unapproved message (col. 1, lines 46-53); an access server for generating a display page with a list of unapproved message (col. 5, lines 6-45); wherein the list of unapproved messages includes links to the unapproved message respectively and which on selection causes transmission of an unapproved message to a recipient's computer device for viewing by the recipient" (col. 1, lines 55-65; col. 14, line 26-38).

As to claim 33, Olivier discloses the claimed wherein the criteria include the sender of a message being on an approved list for the recipient stored on the system (col. 14, line 55-col. 15, line 15).

As to claims 34-35, Olivier discloses the claimed wherein the display page includes a link to at least one display page for displaying and changing the criteria ((col. 17, line 65-col. 18, line 4).

Remark

(A). Applicants asserted that neither Olivier nor Ogilvie teaches or suggests the claimed “providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicating, after viewing”. The examiner disagrees with the precedent assertion. However, when read and analyzed in light of the specification, the invention as claimed does not support Applicants' assertions. The claims do not capture the essence of the invention as argued in applicants' remark pages 7 and 8. The aforementioned assertions, wherein the step of providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicating, after viewing fails to disclose by Olivier and Ogilvie with regard to the invention of claimed, was unsupported by objective factual evidence and was not found to be substantial evidentiary value. Ogilvie, on the other hand, has shown that is old and well known to provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing (see Ogilvie's col.1, lines 45-65 and col.2, lines 1-7; col.7, lines 4-22; col.8, lines 2-11). Ogilvie also discloses the claimed features “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” by allowing recipient to overwrite the self-removing message after the unapproved being read, so the recipient has option to manually delete the unapproved message by moving it from the inbox to the trash folder (col.9, lines 59-66). Applicants are interpreting the claims very narrow using the specification without considering the broad teaching of the reference stated in the rejection. Moreover, Applicants are reminded that the examiner is entitled to the broadest reasonable

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interpretation of the claims. The Applicants always have the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater 162 USPQ 541, 550-51 (CCPA 1969). Ogilvie substantially discloses the invention as claimed. Hence the 35 U.S.C 103 is hereby sustained.

(B). Applicants asserted that Olivier does not teach or suggest the use of “notifying the recipient and storing the message if the message is unapproved”. The examiner disagrees with the precedent assertion. It is important, Applicants are interpreting the claims very narrow without considering the broad teachings of the reference used in the rejection. Olivier substantially discloses the invention as claimed. In addition, Olivier discloses a system for allowing a moderator to act as a human filter for inappropriate message. During message processing, the moderator within the recipient distribution list are located and one or more of them is emailed a request to approve the message for distribution, the message is placed in a suspended messages table until an approval or rejection is received (col.15, lines 1-15). Olivier discloses the use of notifying the recipient and storing the message is unapproved (col.15, lines 54-col.16, line 8). Furthermore, Olivier allows users to override subscription settings when sending a message; the setting is not stored as the user’s permanent settings (col.16, lines 58-66; col.17, lines 7-20; col.18, lines 6-15). The aforementioned assertion is moot; the 35 USC 103 is hereby sustained.

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Applicants asserted there is no motivation or suggestion to modify prior art references to arrive at the claimed invention. In the last office action, the examiner went through the claims phrase by phrase and referred to the prior art column and line number as to where he has drawn the correspondences between applicants' claims phrases and prior art. By failing to address these correspondences, Applicants have failed to rebut the examiner's prima facie case of obviousness uses for a different purpose which does not alter the conclusion that its use in a prior art device would be prima facie obvious from the purpose disclosed in the reference.

(i). Insuffisant Under 35 USC103 (page 9).

Applicants cite MPEP 706.02(j) in supporting their allegation with improper combination. In response to Applicants' arguments that the combination of Olivier in view of Ogilvie is not sufficient under 35 USC 103, the examiner respectfully submits that Applicants misinterprets the references used in the rejection. The Court, *In re Fritch*, stated "the examiner can satisfy the above mentioned assertion only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references". *In re fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (Citing *In re Lalu*, 747, F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Each applied reference does not expressly suggest combination with the other respective references. The motivation referred to *In re Fritch* involves extensive changes to the primary references. Applicants are reminded that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. Furthermore, the examiner recognizes that references cannot be

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arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya USPQ 607 (CCPA 1975). On the other hand, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. The examiner respectfully submits that one having ordinary skill in the art would have been motivated to utilize such a combination would provide Olivier's system the enhanced capability of managing unsolicited email messages without the messages inadvertently removed by a message filter, thereby providing users the option to delete the email message after viewing. Therefor, the combination of the references is proper and the rejection maintained.

(ii). Applicants appear to misinterpret the guidance given under MPEP 2143.01. In particular, references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969.

There are numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions In re Delisle 406 Fed 1326, 160 USPQ 806; In re Kell, Terry and Davies 208 USPQ 871; and In re Fine, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1596, 1598 (Fed. Cir. 1988) (Citing In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined In re Lamberti et al., 192 USPQ 278 (CCPA) that:

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- (a) Obviousness does not require absolute predictability;
 - (b) Non-preferred embodiments of prior art must also be considered; and
 - (c) The question is not express teaching of references, but what they would suggest.
- (B). According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement, that which is disclosed therein.

Furthermore, the skilled artisan would not consider the prior art embodiments in a vacuum, but would have had the motivation to combine the advantageous features of the prior art in the manner purported by the examiner for the reasons and motivations given above as well as in the prior office action. Thus the combined teachings of Olivier in view of Ogilvie when considered as a whole to one of ordinary skill in the art make obvious that Applicants dispute.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

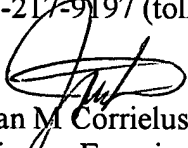
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M Corrielus whose telephone number is (571) 272-4032. The examiner can normally be reached on 10 hours shift.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jean M Corrielus
Primary Examiner
Art Unit 2162

June 15, 2005